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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,093	02/23/2005	Pierre Dreyer	HF/15-22727A/PCT	6625

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CIBA SPECIALTY CHEMICALS CORPORATION
PATENT DEPARTMENT
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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1796	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/526,093	DREYER ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,14,16,20,22,24,25,28,30,31,33,35 and 40-43* is/are pending in the application.

4a) Of the above claim(s) *5-8* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,9,14,16,20,22,24,25,28,30,31,33,35 and 40-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *2/23/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-9, 14, 16, 20, 22, 24, 25, 28, 30, 31, 33, 35, and 40-43 are pending. Claims 10-13, 15, 17-19, 21, 23, 26, 27, 29, 32, 34, and 36-39 have been canceled. Note that, Applicant's response filed 7/30/07 has been entered.

Applicant's election of the phthalocyanine compound of formula (1a), claims 1-4, 9, 14, 16, 20, 22, 24, 25, 28, 30, 31, 33, 35, and 40-43, in the reply filed on 7/30/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Note that, even though Applicant elected a specific compound in addition to the election of the phthalocyanine compound of formula (1a), the election of one specific compound was not required in the restriction requirement mailed 6/29/07, and the election phthalocyanine compounds corresponding to formula (1a) is sufficient.

Claims 5-8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/30/07.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 9, 14, 16, 20, 2, 24, 25, 28, 30, 31, 33, 35, and 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term ""low molecular-weight organic acid or salt thereof"" in claim 1 is a relative term which renders the claim indefinite. The term ""low molecular-weight organic acid or salt thereof"" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Note that, the Examiner asserts that the specification provides no definition or guidance as is what to meant by "low molecular-weight organic acid or salt thereof" and in the absence of such a definition or guidance, it is unclear as to what additional compounds other than those specifically listed in the specification would fall within the scope of "low molecular-weight organic acid or salt thereof" as recited by instant claim 1. Thus, one of ordinary skill in the art would not be able to determine the metes and bounds of the claimed invention. Clarification is required.

With respect to instant claim 20, it is vague and indefinite in that it is unclear what is meant by "water-soluble salts used in washing agent and/or washing agent additive formulations." The Examiner asserts that it would not be clear to one of ordinary skill in the art as to exactly which water-soluble salts from what types of additive formulations can be used, and the specification provides no guidance or clarification as to what additional salts, other than those specifically listed, may be used in the composition.

Thus, one of ordinary skill in the art would not be able to determine the metes and bounds of the claimed invention. Clarification is required.

Note that, instant claims 2-4, 9, 14, 16, 22, 24, 25, 28, 30, 31, 33, 35, and 40-43 have also been rejected due to their dependency on claims 1 and/or 20.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4, 9, 14, 16, 20, 22, 24, 25, 28, 30, 31, 33, 35, and 40-43rejected under 35 U.S.C. 103(a) as being unpatentable over Kvita et al (US 6,291,412) in view of Willey et al (US 6,407,049), Vandijk et al (US 2003/0195134), or Kitko et al (US

2003/0232734). With respect to Vandijk et al (US 2003/0195134), Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Kvita et al teach water-soluble granules of phthalocyanine compounds comprising from 2 to 50% by weight of a water-soluble phthalocyanine compound, from 10 to 95% by weight of an anionic dispersing agent, from 0 to 25% by weight of a water-soluble organic polymer, from 0 to 10% by weight of a further additive, and from 3 to 15% by weight of water. The granules are suitable especially as additives to washing agents for textile materials. See Abstract. Note that, Kvita et al teach phthalocyanine compounds having the same formula as recited by the instant claims. See column 1, line 40 to column 4, line 69. Suitable anionic dispersing agents include the condensation products of aromatic sulfonic acids and formaldehyde, etc. See column 10, line 50 to column 11, line 20. Suitable water-soluble polymers include gelatin, polyacrylates, etc. Additional agents may also be used such as wetting agents, dyes, pigments, etc., in amounts from 0 to 10% by weight. The granules are produced, for example, in the following manner: first of all, an aqueous solution of the phthalocyanine dye is prepared, the anionic dispersing agent and, if desired, further additives are added thereto, and the mixture is stirred, where appropriate with heating, until a homogeneous solution is obtained. See column 11, line 30 to column 12, line 15.

Additionally, Kvita et al teach washing agent formulations containing 5 to 70% of an anionic surfactant and/or of a nonionic surfactant, from 5 to 50% of a builder

substance, from 1 to 12% of a peroxide, and from 0.01 to 1% phthalocyanine granules. See column 13, lines 1-25.

Kvita et al do not teach phthalocyanine granules containing an inorganic salt and/or a low molecular weight organic acid or salt thereof or granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Willey et al teach photochemical singlet oxygen generators having enhanced fabric substantivity, said photochemical singlet oxygen generators useful as photobleaches in laundry detergent compositions. See Abstract. Suitable photosensitizers include phthalocyanines, etc. See column 5, line 5 to column 6, line 69. The photosensitizers may be used in laundry detergent compositions containing a detersive surfactant, a photosensitizer, and the balance adjunct ingredients. The laundry detergent compositions may be liquid, granular, etc. See column 25, line 45 to column 26, line 13. Inert salts (filler salts) may be used in the compositions and include any water-soluble inorganic or organic salt or mixtures of such salts which do not destabilize any surfactant present. Examples of suitable salts include alkali metal sulfates, borates, carbonates, citrates, etc., which may be used in amounts from 10 to 40%. See column 28, line 50 to column 29, line 9.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal carbonate or citrate in the granule taught by Kvita et al, with a reasonable expectation of success, because Willey et al teach the use

of alkali metal carbonates or citrates as filler salt materials in a similar granular composition and further, filler salts are conventionally used in granular compositions to provide increased substance and enhanced solubility to the granule and are notoriously well-known to those of ordinary skill in the art.

Vandijk et al teach a detergent granule comprising a surfactant system comprising at least 10% by weight of said surfactant system, of a nonionic surfactant and a specific hydrotrope. Said granule demonstrates better dissolution and/or lower residue formation. The present invention further relates to detergent compositions comprising said granule. See Abstract. The detergent granule can contain a stickiness breaking material which is any material which helps breaking the adhesion of granules or powders and rendering them more free flowing, in particular when mixed with the granules or powders. Suitable stickiness breaking agents include phosphates, sodium carbonates, citrates, etc., in amounts from 1% to 20% by weight. See paras. 51-55.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal carbonate or citrate in the composition taught by Kvita et al, with a reasonable expectation of success, because VanDijk et al teach that the use of alkali metal carbonates or citrate in a similar granular composition renders the granular composition more free flowing when mixed with other granules and further, this property would be desirable for the granular compositions taught by Kvita et al to avoid clumping of the granules and maximize the use of each granule.

Kitko et al teach detergent compositions containing bleach catalysts or perfumes. See Abstract. These particles are used in detergent compositions which additionally

contain adjunct components. The adjunct materials are present in amounts from 80% by weight to 99.9% by weight and include fillers, soil suspension agents, etc. See para. 80. Suitable filler salts include alkali metal carbonates, silicates, sulphates, etc., and are used in amounts from 5% to 60% by weight. See para. 94. Suitable soil suspending agents include polymers derived from acrylic acid (polyacrylic acid), etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal carbonate in the granule taught by Kvita et al, with a reasonable expectation of success, because Kitko et al teach the use of alkali metal carbonates as filler salt materials in a similar granular composition and further, filler salts are conventionally used in granular compositions to provide increased substance and enhanced solubility to the granule and are notoriously well-known to those of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use polyacrylic acid in the granule taught by Kvita et al, with a reasonable expectation of success, because Kitko et al teach that the use of polyacrylic acid in a similar granular composition provides soil suspension properties to the granule and further, it would be desirable for one of ordinary skill in the art to provide the granules of Kvita et al with soil suspension properties to aid in cleaning laundry and textiles.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or

salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims and use these granules in further detergent compositions, with a reasonable expectation of success, because the broad teachings of Kvita et al in combination with Willey et al, Kitko et al, or VanDijk et al suggest granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims and the use these granules in further detergent compositions.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gregory R. Del Cotto
Primary Examiner
Art Unit 1796

GRD
October 14, 2007